

THE HONORABLE RICARDO MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH FLEMING and JOHN DOE,

Plaintiffs,

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
LATTER-DAY SAINTS, a Utah corporation
sole, a/d/a "MORMON CHURCH"; LDS
SOCIAL SERVICES a/d/a LDA FAMILY
SERVICES, a Utah corporation,

Defendants.

NO. C04-2338 RSM

PLAINTIFFS' MOTION FOR LETTERS
ROGATORY RE: DEPOSITION OF
JACK "LOHOLT" ONEFREY

Note for Motion: September 26, 2005

[CLERK'S ACTION REQUIRED]

I. RELIEF REQUESTED

Plaintiffs move this Court for an Order issuing the Letters Rogatory attached as **Exhibit A**, to the order, to the appropriate authority in Lac La Hache, British Columbia, Canada, so that Jack Loholt, a/k/a Jack Onefrey (hereinafter, Jack "Loholt" Onefrey), a witness to the incidents complained of by the plaintiffs, may be examined by deposition.

PLTFS' MOTION FOR LETTERS ROGATORY - 1 of 4
(C04-2338 RSM)
[150190 v08.doc]

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II. STATEMENT OF FACTS

The plaintiffs in this case were subjected to years of sexual abuse by Jack "Loholt" Onefrey, when they were children. At the time of the abuse, Mr. Onefrey was employed by the Corporation of the President of the Church of Jesus Christ of Latter-Day Saints ("Mormon Church"). Mr. Onefrey also received counseling for his sexual abuse issues from LDS Social Services (LDSSS). On October 25, 2004, plaintiffs filed a Complaint for personal injuries against the Mormon Church & LDSSS for the sexual abuse they suffered. All incidents of abuse complained of in the Complaint occurred in King County, Washington. The deposition testimony of Jack "Loholt" Onefrey is necessary to preserve evidence for trial, and because it will likely produce material evidence in the pending litigation in this Court.

III. STATEMENT OF ISSUE

Should this Court grant plaintiffs' motion to issue Letters Rogatory to the appropriate Canadian authority to preserve the testimony of a Canadian witness for trial?

IV. EVIDENCE RELIED UPON

Plaintiffs rely upon the pleadings and other documents on file in this case, and upon the Declaration of Steven T. Reich with exhibits attached thereto.

V. LEGAL AUTHORITY

Plaintiffs seek the deposition testimony of Jack "Loholt" Onefrey, a resident of Canada, pursuant to FRCP 28(b)(3), and 28 U.S.C. § 1781(b)(2). The Courts have inherent authority to issue Letters Rogatory. *United States v. Reagan*, 453 F.2d 165, 172 (6th Cir. 1971); *United States v. Staples*, 256 F.2d 290, 292 (9th Cir. 1958). On an application for the issuance of Letters Rogatory seeking a deposition in a foreign country, the Court will not ordinarily weigh the evidence to be elicited by deposition and will not determine whether the

witness will be able to give the anticipated testimony. *B&L Drilling Electronics v. Totco*, 87 F.R.D. 543, 545 (W.D. Okla. 1978). Courts and respected treatises take the position that some good reason must be shown by the opposing party for a court to deny an application for Letters Rogatory. *Zassenhaus v. Evening Star Newspaper Co.*, 131 U.S. App. D.C. 384, 404 F.2d 1361, 1364 (D.C. Cir. 1968); Wright & Miller, 8 FEDERAL PRACTICE & PROCEDURE, § 2083, text and noted cases at n. 22 (1990 Supp.).

Here, plaintiffs' Letters Rogatory is attached to this motion as Exhibit A. The Letters Rogatory conform to § 53 of the British Columbia Evidence Act, R.S.B.C. 1996, C. 124.¹ The Letters Rogatory request that the British Columbia Court, under the principle of comity of nations, order the examination of the persons within their jurisdiction of the British Columbia Court.

VI. PROPOSED ORDER

A Proposed Order granting the relief requested accompanies this motion.

DATED this 15th day of September, 2005.

s/ Steven T. Reich
 State Bar Number 24708
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Attorneys for Plaintiffs

[26313-00001]

¹ See Reich Declaration, Ex. B.

CERTIFICATE OF SERVICE

I, Natalie J. Leth, hereby certify under penalty of perjury under the laws of the State of Washington that on September 15, 2005, I electronically filed the foregoing (1) PLAINTIFFS' MOTION FOR LETTERS ROGATORY RE: DEPOSITON OF JACK "LOHOLT" ONEFREY (w/attached LETTERS ROGATORY), (2) DECLARATION OF STEVEN T. REICH IN SUPPORT OF PLAINTIFFS' MOTION FOR LETTERS ROGATORY, and (3) [PROPOSED] ORDER FOR ISSUANCE OF LETTERS ROGATORY with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record. I further certify that, if applicable, I have served any attorneys of record who are non-CM/ECF participants via facsimile.

DATED this 15th day of September, 2005 at Seattle, Washington.

s/ Natalie J. Leth
Paralegal
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[26313-00001]

THE HONORABLE RICARDO MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH FLEMING and JOHN DOE,

Plaintiffs,

v.

THE CORPORATION OF THE PRESIDENT
OF THE CHURCH OF JESUS CHRIST OF
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SERVICES, a Utah corporation,

Defendants.

NO. C04-2338 RSM

LETTERS ROGATORY

United States District Court for the Western District of Washington to the Appropriate
Authority in British Columbia, Canada, Greetings:

WHEREAS, this proceeding is presently under the jurisdiction of and is now pending
before the United States District Court for the Western District of Washington; and

WHEREAS, it is found by this Court to be necessary for the purposes of justice and
for the preservation of testimony for trial, that the following person, eyewitness to the issue in
the underlying litigation, and now residing within your jurisdiction, should be examined under

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[150192 v05.doc]

EXHIBIT A

LAW OFFICES
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1 oath relating to those matters, namely, Jack "Loholt", a/k/a Jack Onefrey (hereinafter, Jack
2 "Loholt" Onefrey), of Lac La Hache, B.C., Canada [*Postal Code*]; and

3 WHEREAS, having heard the argument of counsel, and having read the Declaration of
4 Steven T. Reich in support of the application for an Order issuing Letters Rogatory;

5 NOW I, Ricardo S. Martinez, Judge United States District Court for the Western
6 District of Washington, pursuant to FRCP 28(b), hereby request that, in furtherance of justice
7 and by the proper and usual process of your Court, you summon the attorneys or agents of the
8 party and the witness to be examined to attend at such time and place as you shall appoint,
9 either before you, or before such commissioner as according to your procedures is competent
10 to take evidentiary depositions of witnesses, and that you will cause the witness, on oath or
11 affirmation, to be examined orally for the giving of evidence and the production of documents
12 in his possession identified in the attached request, in the presence of the attorneys or agents
13 of the party or such of them as shall, on due notice given, attend the examination;

14 AND I FURTHER REQUEST that you appoint Len Doust, Q.C., or such other
15 Commissioner as the Court deems appropriate, as the Commissioner before whom the
16 evidence is to be taken;

17 AND I FURTHER REQUEST that you permit the attorneys or agents of any party
18 present, including members of the Washington Bar, to examine any witnesses called by him
19 and the attorneys or agents appearing party to cross-examine the witness and the attorneys or
20 agents.

21 WHEREAS, the testimony of the proposed deponent is necessary at the trial of this
22 action in order that this Court may render full and complete justice between the parties and for
23 the preservation of testimony for trial. In this action, the plaintiffs allege they were sexually
24 abused by Jack "Loholt" Onefrey when the plaintiffs were children. Jack "Loholt" Onefrey
25 was an employee of the defendant Corporation of the President of the Church of Jesus Christ
26

1 of Latter-Day Saints during the times in which the abuse occurred. Jack "Loholt" Onefrey
2 received counseling for his sexual abuse problems from LDS Social Services (LDSSS)
3 Plaintiffs have filed claims against the Corporation of the President of the Church of Jesus
4 Christ of Latter-Day Saints & LDSS for their negligent conduct;

5 WHEREAS, the United States District Court for the Western District of Washington
6 has jurisdiction over the subject matter of this case, and is a competent court of law and equity
7 with the power to compel the attendance of witnesses and the production of documents by
8 corporations and individuals both in and outside its jurisdiction;

9 WHEREAS, plaintiffs seek to compel the testimony of Jack "Loholt" Onefrey, in
10 Lac La Hache, British Columbia, Canada, where he resides;

11 WHEREAS, plaintiffs seek testimony from Jack "Loholt" Onefrey regarding the abuse
12 of the plaintiffs, and the facts pertaining to his employment by the Corporation of the
13 President of the Church of Jesus Christ of Latter-Day Saints and involvement with LDSSS;

14 WHEREAS, the evidence sought from Jack "Loholt" Onefrey is relevant to the claims
15 of the plaintiffs in the case before the United States District Court for the Western District of
16 Washington;

17 WHEREAS, the evidence of Jack "Loholt" Onefrey is required for trial and pre-trial
18 purposes, and the evidence is necessary in the interest of justice to enable the United States
19 District Court for the Western District of Washington to determine the issues pending before
20 it;

21 WHEREAS, plaintiffs further seek any documents in Jack "Loholt" Onefrey's
22 possession, custody, or control that relate to his involvement with the plaintiffs, and his
23 employment with the defendant Corporation of the President of the Church of Jesus Christ of
24 Latter-Day Saints & LDSSS. The plaintiffs have identified Len Doust, Q.C., or such other
25

1 Commissioner as the Court deems appropriate, as a Commissioner before whom Jack
2 "Loholt" Onefrey is to attend his deposition;

3 WHEREAS, the United States District Court for the Western District of Washington at
4 Seattle could reciprocate by granting enforcement of Letters Rogatory from a Canadian Court;

5 WHEREAS, the deposition of Jack "Loholt" Onefrey will be governed by the laws of
6 the State of Washington and the law of British Columbia, with the law of British Columbia
7 prevailing in the event of a conflict;

8 WHEREAS, the examination of Jack "Loholt" Onefrey will be under oath or solemn
9 affirmation and the witness will be required to give oral answers to question and plaintiffs will
10 be allowed to cross-examine the witness;

11 WHEREAS, if objection is taken to a question based on the laws of the State of
12 Washington, the objection will be noted on the record, the questions answered by the witness,
13 and the issue of admissibility reserved for the trial judge in the United States District Court
14 for the Western District of Washington;

15 We therefore request that in the interest of justice you cause by your proper and usual
16 process, said person to appear to be examined, and cause the evidence of said witness to be
17 recorded verbatim by a Court Reporter, and any documents produced on the examination to
18 be marked for identification, and that you authorize the Commissioner to authenticate the
19 deposition taken on the examination and any documents or certified copies produced.

20 WITNESS, Ricardo S. Martinez, Judge United States District Court for the Western
21 District of Washington, this _____ day of September, 2005.

22
23 By _____
24 Honorable Ricardo S. Martinez
25 Judge United States District Court for the
26 Western District of Washington

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